

### Tips, Traps, and Resources

**Firm E-mail Address for Court Notices:** Some courts no longer send written notices to attorneys and allow only one e-mail address per law firm for court notices. All law offices should have a firm e-mail address that is used exclusively for court notices. Whoever is designated to monitor this e-mail account should forward notices to the appropriate attorney as they are received. Everyone in the office should have access to this e-mail (i.e., the login and password). The e-mail address can be added to the contact information on your firm's pleading paper.

**FDIC Deposit Insurance:** On October 3, 2008, FDIC deposit insurance temporarily increased from \$100,000 to \$250,000 per depositor through December 31, 2009. (Visit [www.fdic.gov](http://www.fdic.gov) for more information.) PLF practice aids (at [www.osbplf.org](http://www.osbplf.org)), Trust Accounting and Frequently Asked Trust Account Questions, have been updated accordingly. For clarification about a lawyer's responsibility in the event of bank insolvency, see "Trust Accounts and the FDIC," by Sylvia Stevens, in the *Oregon State Bar Bulletin*, October 2008, at [www.osbar.org/publications/bulletin/08oct/barcounsel.html](http://www.osbar.org/publications/bulletin/08oct/barcounsel.html).

**Tax Talk Today®:** This is a live Webcast program sponsored by the IRS that airs the second Tuesday of each month, featuring tax experts and professionals. The next program on Tuesday, November 4, 2008, from 11:00 a.m. to 12:00 p.m. PT, will discuss "Preparing for the New Form 990," regard-

ing the new forms required for nonprofits. The programs are free, but you must register to participate. Past programs are archived on the Web site (e.g., "Retirement Plan Pitfalls," July 8, 2008). Visit [www.taxtalktoday.tv](http://www.taxtalktoday.tv) for more details. (*Editor's note: The PLF has not reviewed this program.*)

**EEOC Workplace Disability Guide:** The Equal Employment Opportunity Commission (EEOC) has issued a question-and-answer guide to help employers better understand the requirements of the Americans with Disabilities Act. The guide is available at [www.eeoc.gov/facts/performance-conduct.html](http://www.eeoc.gov/facts/performance-conduct.html).

**Noncompetition Agreements:** Sections 3 and 5 of 2007 Oregon Laws Chapter 902 (SB 248) state that the amendments to ORS 653.295 apply to noncompetition agreements entered into on or after the effective date (January 1, 2008), and that any noncompetition agreement entered into before that date will continue to be governed by the previous statute in effect. The printed version of 2007 ORS 653.295 omits this effective date language; nevertheless, the Legislative Counsel's office confirmed that it was an editorial decision to omit this language and does not alter the effective date of the amendments. Noncompetition agreements executed before January 1, 2008, are not affected by the 2007 amendments.

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#### DISCLAIMER

*IN BRIEF* includes claim prevention information that helps you to minimize the likelihood of being sued for legal malpractice. The material presented does not establish, report, or create the standard of care for attorneys. The articles do not represent a complete analysis of the topics presented, and readers should conduct their own appropriate research.

## Tips, Traps, and Resources, continued

### **Nondisclosure Agreements Banned for CPAs:**

Effective January 1, 2008, the Oregon Board of Accountancy adopted OAR 801-030-0020(13) prohibiting a CPA from entering into a nondisclosure agreement. The new rule defines a “nondisclosure agreement” as a written or oral agreement that prevents or inhibits the reporting of a violation to the Oregon Board of Accountancy or any other state or federal agency. If a CPA enters into an agreement containing a nondisclosure provision, the CPA can be subject to disciplinary action, even if the underlying reason for the nondisclosure provision would not have resulted in a violation. Lawyers who draft agreements for CPAs – even a settlement of a simple fee dispute – must not include a restriction on disclosure to the Oregon Board of Accountancy or other regulatory body.

**Criminal Records Searches:** The Oregon Judicial Department is alerting practitioners about inaccurate information provided by a Web site, [www.CriminalSearches.com](http://www.CriminalSearches.com), which purports to search for criminal records nationwide for free. For more information, visit [www.ojd.state.or.us/aboutus/ONLINERECORDSCHECKS.htm](http://www.ojd.state.or.us/aboutus/ONLINERECORDSCHECKS.htm).

**Expert Medical Testimony:** In the recent case of *Marcum v. Adventist Health System/West* (September 16, 2008), the Oregon Supreme Court reversed the Oregon Court of Appeals and held that an expert’s failure to introduce either a scientifically demonstrable mechanism of causation or studies showing a high degree of correlation is not grounds, by itself, to exclude the expert’s testimony as not scientifically valid. The court found that the expert sufficiently supported his differential diagnosis to

“rule in” the plaintiff’s exposure to the chemicals as a possible cause of the symptoms. Questions as to the weight of the testimony, any weaknesses in the expert’s theory, and the ultimate issue of causation were for the jury to decide based on all the evidence. You can view the opinion at [www.publications.ojd.state.or.us/S055431.htm](http://www.publications.ojd.state.or.us/S055431.htm).

**Shareholder Derivative Actions:** In *Potter v. Hughes* (October 10, 2008), the Ninth Circuit Court of Appeals held that the plaintiff in a shareholder derivative suit did not satisfy the demand requirement of FRCP 23.1 because she was not named in the demand letter to the board of directors. The court was applying California law, which is identical to Delaware law on the demand requirement. You can view the opinion at [www.ca9.uscourts.gov/ca9/newopinions.nsf](http://www.ca9.uscourts.gov/ca9/newopinions.nsf).

**Tortious Fraud:** In *Knepper v. Brown* (October 9, 2008), the Oregon Supreme Court held that the element of “proximate cause” in tortious fraud is the same as “reasonable foreseeability” in *Fazzolari* and *Buchler*. You can view the opinion at [www.publications.ojd.state.or.us/S055155.htm](http://www.publications.ojd.state.or.us/S055155.htm).

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